

**International Union of Operating Engineers, Local 132, AFL-CIO and Edward Phillips and National Engineering Contracting Co.,<sup>1</sup> Party to the Contract. Case 9-CB-4993**

10 June 1983

**DECISION AND ORDER**

**BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER**

On 26 August 1982 Administrative Law Judge Donald R. Holley issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief and the General Counsel filed an answering brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,<sup>2</sup> and conclusions of the Administrative Law Judge, but not to adopt his recommended Order.<sup>3</sup>

**ORDER**

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, International Union of Operating Engineers, Local 132, AFL-CIO, Charleston, West Virginia, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Causing or attempting to cause National Engineering Contracting Co., or any other employer, to give preference on utility work to parent body members of Local 132 who are physically handicapped or 50 years of age or older, by giving force or effect to, or attempting to enforce, contractual or union constitution or bylaw provisions which

provide for preference on utility work to such employees.

(b) Threatening employees that they will not be assigned to utility work unless they become members of the Local 132 parent body.

(c) Causing, or attempting to cause, National Engineering Contracting Co., or any other employer, to lay off or discharge Edward Phillips or other employees in violation of Section 8(a)(3) of the Act to enable Respondent Union to give unlawful preference on utility work to parent body members who are physically handicapped or 50 years of age or older.

(d) In any like or related manner restraining or coercing employees in the exercise of any of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which will effectuate the policies of the Act:

(a) Notify National Engineering Contracting Co., in writing, with a copy to Edward Phillips, that it has no objection to the employment of Edward Phillips.

(b) Make Edward Phillips whole for any loss of earnings that he may have suffered due to the discrimination practiced against him in the manner set forth in the section of the Administrative Law Judge's Decision entitled "The Remedy."

(c) Expunge from its files any reference to the layoff of Edward Phillips on 12 June 1981, and notify him in writing that this has been done and that evidence of this unlawful layoff shall not be used as a basis for future actions against him.

(d) Post at its business office, hiring halls, and meeting places copies of the attached notice marked "Appendix."<sup>4</sup> Copies of said notice, on forms provided by the Regional Director for Region 9, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(e) Sign and mail sufficient copies of said notice to the Regional Director for Region 9, for posting by National Engineering Contracting Co., Huntington, West Virginia, if willing, at all places where notices to its employees are customarily posted and ask the Employer to remove any reference to Phil-

<sup>1</sup> The name of the Employer appears as amended at the hearing.

<sup>2</sup> Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

We note that the Administrative Law Judge inadvertently found that Edward Phillips caused his name to be placed on the parent body out-of-work list maintained by Respondent on 4 September 1980. This occurred on 5 September 1980.

<sup>3</sup> In his recommended Order, the Administrative Law Judge erroneously failed to require Respondent to notify, in writing, National Engineering Contracting Co. and Edward Phillips that it no longer has any objection to his employment. In order to correct this omission and to include the expunction remedy recently approved by the Board in *International Brotherhood of Boilermakers (Daniel Construction Company)*, 266 NLRB No. 106 (1983), we shall issue a new Order and notice in conformity with his Conclusions of Law.

<sup>4</sup> In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

lips' unlawful discharge from the Employer's file and notify Phillips that it has asked the Employer to do this.

(f) Notify the Regional Director for Region 9, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

## APPENDIX

### NOTICE TO EMPLOYEES AND MEMBERS POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

WE WILL NOT cause or attempt to cause National Engineering Contracting Co., or any other employer, to give preference on utility work to parent body members of International Union of Operating Engineers, Local 132, AFL-CIO, who are physically handicapped or 50 years of age or older, by giving force or effect to or attempting to enforce contractual or union constitution or bylaw provisions which provide for preference on utility work to such employees.

WE WILL NOT threaten employees that they will not be assigned to utility work unless they become members of the Local 132 parent body.

WE WILL NOT cause or attempt to cause National Engineering Contracting Co., or any other employer, to lay off or discharge Edward Phillips or other employees in violation of Section 8(a)(3) of the Act to enable us to give unlawful preference on utility work to parent body members who are physically handicapped or 50 years of age or older.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL notify National Engineering Contracting Co., in writing, with a copy to Edward Phillips, that we have no objection to the employment of Edward Phillips.

WE WILL make Edward Phillips whole for any loss of earnings that he may have suffered due to the discrimination we practiced against him by paying him a sum equal to what he would have earned, less any net interim earnings, plus interest.

WE WILL expunge from our files any reference to the layoff of Edward Phillips on 12 June 1981, and notify him in writing that this has been done and that evidence of this unlawful layoff will not be used as a basis for future actions against him, and WE WILL ask National

Engineering Contracting Co. to remove any reference to Phillips' unlawful discharge from its files and notify Phillips that we have asked the Employer to do this.

### INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 132, AFL-CIO

## DECISION

### STATEMENT OF THE CASE

DONALD R. HOLLEY, Administrative Law Judge: Upon a charge filed by Edward Phillips (herein called the Charging Party or Phillips), the Regional Director for Region 9 of the National Labor Relations Board (herein called the Board) issued a complaint against International Union of Operating Engineers, Local 132, AFL-CIO (herein called Respondent or Local 132), on September 2, 1981,<sup>1</sup> alleging, in substance, that Respondent has violated Section 8(b)(1)(A) and (2) of the National Labor Relations Act since January 16, 1981, by: maintaining and enforcing a contractual hiring hall provision which provides, in pertinent part, "all parent body members physically handicapped or fifty (50) years of age or over shall have preference on compressors and welding machines as provided in the by-laws of the [Respondent]"; threatening on June 16 that an employee would never work on utility jobs without having a parent body book; and refusing on June 15 to refer Phillips to a job working on welding machines and compressors for National Engineering Contracting Co.<sup>2</sup> (herein called National) at a Huntington, West Virginia, worksite. By timely answer, Respondent denies it has engaged in the unfair labor practices alleged.

This case was heard in Huntington, West Virginia, on June 30, 1982. Subsequent to the hearing, counsel for the General Counsel and counsel for Local 132 filed briefs which have been carefully considered. Upon the entire record and upon my observation of the demeanor of the witnesses while giving testimony, I make the following:

### FINDINGS OF FACT

#### 1. JURISDICTION

The complaint alleges, and Respondent's answer admits, that National Engineering Contracting Co., an Ohio corporation, with offices in Strongsville, Ohio, is a general contractor. During the 12 months preceding issuance of the complaint, it purchased and received in Strongsville, Ohio, from suppliers located outside the State of Ohio, goods and materials valued in excess of \$50,000. It is admitted, and I find, that National Engineering is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

<sup>1</sup> All dates herein are 1981 unless stated otherwise.

<sup>2</sup> The name of the Employer as amended at the hearing.

## II. STATUS OF THE LABOR ORGANIZATION

It is admitted, and I find, that Respondent is a labor organization within the meaning of Section 2(5) of the Act.

## III. THE ALLEGED UNFAIR LABOR PRACTICES

### A. Facts

In late 1980, National Engineering commenced construction of a water waste treatment plant in Huntington, West Virginia. At the time, it was signatory to a collective-bargaining agreement with Respondent which required it to obtain its operating engineers through the exclusive hiring hall operated by Local 132. The agreement contains a clause which provides:<sup>3</sup>

4. The selection of applicants for referral to jobs shall be on a non-discriminatory basis and shall not be based on, or in any way affected by union membership, by-laws, rules, regulations, constitutional provisions or any other aspect or obligation of union membership, policies or requirements; provided, however, all parent-body members physically handicapped or fifty (50) years of age or over shall have preference on compressors and welding machines as provided in the by-laws of the local union. This preference shall not be used in any manner to change an assignment.

The record reveals that Local 132 consists of a parent local and several branch locals. Since 1966, the Charging Party, Phillips, has been a member of Branch Local 132B. The initiation fee for those desiring to join a branch local was some \$60 less than the initiation fee charged for membership in Local 132, the parent local, at the time the hearing was held in this case. James (Smokey) Pruett,<sup>4</sup> the current business agent for Local 132, indicated during his testimony that a person who has been a member of a branch local for 3 years can become a member of the parent body by appearing before Local 132's executive board, stating the types of work he is qualified to perform and paying the difference between his branch local initiation fee and the current Local 132 initiation fee.

While Respondent's branch locals operate hiring halls, any member of Respondent is entitled to cause his name to be placed on the out-of-work list maintained by the parent body, which is headquartered in Charleston, West Virginia. Homer Maddix, whose title is dispatcher, operates the parent body hiring hall.

The Charging Party, Phillips, on September 4, 1980, contacted Maddix and caused his name to be placed on Local 132's parent body out-of-work list, indicating he desired referral as a crane picker, an oiler, a utility man, or a deckhand. Respondent Business Agent Pruett indicated during his testimony that a utilities employee is an

individual who operates water pumps, air compressors, welding machines, and generators.

In April 1981, a Respondent parent body member named Albert Legg was the union steward on National Engineering's Huntington waste water treatment jobsite. Legg had originally been referred to the job as an oiler, but as the job progressed he performed some utility work for which he was paid extra moneys. Phillips indicated during his testimony that Legg informed him in April that a utility job would be opening up at the jobsite at some indefinite time in the future.

On Monday, June 9, Business Agent Pruett visited the Huntington waste water treatment jobsite and conversed with the job superintendent, Jack Shott. According to Pruett, he then informed Shott that he had sufficient utility work to justify the addition of a utilities man on the job. After Pruett left the jobsite, Shott contacted his superiors in Cincinnati, Ohio, and was authorized to hire a utility man on the job the following week.

At some unstated time after he had caused his name to be placed on Respondent's out-of-work list, Phillips informed Maddix that his unemployment benefits had run out and he was in need of employment. Apparently, Phillips had given the same message to the steward on the National Engineering job because Legg contacted Maddix on Wednesday, June 10, and informed him he would be absent from the jobsite on Thursday, June 11, and Friday, June 12, and that someone from the union hall would have to be referred to the job to work in his absence. Legg recommended that Phillips be referred to the temporary position. Maddix explained during his testimony that while others seeking utility work were ahead of Phillips on the out-of-work list, he telephoned Phillips on June 10 and offered him the 2 days work on the National Engineering job to help him in his financial situation. When Phillips indicated he would accept the referral, Maddix told him it might work to his advantage because, once he got on National Engineering's payroll, the Company would be entitled to recall him to the job for 6 months after he was laid off.

Phillips reported to National Engineering's Huntington job on Thursday, June 11. During the course of that day, Shott indicated to him that he was going to put on a utility man and the superintendent indicated that he did not want Legg operating his utilities but would like for Phillips to remain on in the utility job. When Phillips indicated he would like to have the position, Shott told him he would check with the Union.

During the evening of Thursday, June 11, Phillips called Maddix and asked him if he could remain at National Engineering if the superintendent made a job for him. Maddix replied, "That's why I sent you. If anyone deserves a good job it's you since you have been out of work so long." Phillips informed Shott of his above-described conversation with Maddix the next day and Shott told him he would call the Union and ask the people.

Shott testified that he telephoned Maddix on Friday, June 12, and informed him he needed a utility man on Monday, June 15. During the conversation, Shott claims

<sup>3</sup> G.C. Exh. 2, sec. 4, p. 37.

<sup>4</sup> It is admitted that James (Smokey) Pruett (business agent), Homer D. Maddix (dispatcher), and Joseph Handley (business manager) are, and have been at all times material herein, agents of Respondent within the meaning of Sec. 2(13) of the Act.

he told Maddix he would prefer to have Phillips.<sup>5</sup> Maddix replied that he understood that Legg had been promised the utility position. Shott replied he did not want Legg to operate his utilities and Maddix then told him he could not make the assignment and would have Smokey Pruett call him.

When Shott telephoned Maddix on June 12, Pruett was in the field. He claims that, when he returned to the office at or around 3:30 p.m., he was given a note which informed him he was to call National Engineering concerning a utility man. Although Maddix indicated during his testimony that he spoke with Pruett that afternoon, the record fails to reflect the content of their discussion and Pruett denied that he was aware Phillips was then working on the National Engineering jobsite. According to Pruett, he telephoned the jobsite and Shott, who he then thought was Roy Johnson, the assistant superintendent, answered the telephone. Pruett claims Shott told him he was not going to argue with him over a utility man any more and asked that he send a utility man on Monday morning. Pruett suggested that the utility job be given to Legg and Shott informed Pruett he did not want Legg as a utility man. According to Pruett, Shott then stated he was through with Phillips and added he was not going to make Phillips wait until payday for his money, but would pay him off that day.<sup>6</sup> At the end of the day, Shott laid Phillips off.

After he was laid off, Phillips contacted Maddix to ask why he had not gotten the utilities job. While both individuals touched upon the content of the conversation when testifying, neither purported to relate all that was said. Phillips claims he asked Maddix what was happening and Maddix replied, "Don't blame me and Smokey. It's the superintendent's fault, Roy Johnson." He claims he said Roy Johnson was not the superintendent; that Jack Shott was, and then asked why he was laid off. Phillips claims Maddix's reply was, "you don't have a parent body book." Phillips states he told Maddix, "Well, I have been running utilities on jobs before without a parent body book," and Maddix commented, "You'll never run utilities again." Maddix's version of the conversation is that Phillips called him and was asking particularly about the utilities job. He claims he replied that National Engineering had the right to call back who they wanted or whatever, but "If they give me an order for a utility man, I'll go by the hiring hall list."<sup>7</sup>

During the week of June 15, Phillips spoke with Local 132 President Joseph Handley and told him he felt Pruett had unfairly refused to let him have the National Engineering utility job because he was not a member of the

parent body. After ascertaining that Phillips was 59 years of age, Handley told him he also thought he should have been referred to the job.

After talking to Phillips, Handley scheduled a meeting at the National Engineering jobsite for the purpose of discussing the Phillips situation. The meeting was held on June 26. Attending were Phillips, Handley, Pruett, Shott, and Johnson. During the course of the meeting, Pruett stated his recollection of the June 12 conversation he had with Shott, and Shott agreed he had not asked that Phillips be referred as a utility man during the discussion. Handley then explained to Phillips that if he had been transferred to the utility job he could have kept the job, and Pruett told Phillips that if he got in that type of situation again he should come to the hall and put up \$60 and get a parent body book.

The record reveals that Dayton Comer, who had gone on the out-of-work list seeking employment as a utility man on July 28, 1980, was actually referred to the National Engineering's Huntington job as a utility man on Monday, June 15. Comer was a member of the parent body and is over 50 years of age.

### B. The Issues

1. Whether, by maintaining and enforcing since January 16, 1981, a contract provision granting referral preference to utility work to "parent body member physically handicapped or fifty (50) years or older," Respondent violated Section 8(b)(1)(A) and (2) of the Act.
2. Whether Respondent, through Maddix's June 16, 1981, statement that Edward Phillips would never work utilities without a parent body book, violated Section 8(b)(1)(A) and (2) of the Act.
3. Whether Respondent failed to refer Edward Phillips to utility work at National Engineering on June 15, 1981, in violation of Section 8(b)(1)(A) and (2) of the Act.

### C. Analysis and Conclusions

#### 1. The "parent body" clause

With exception of certain situations involving union-security clauses, not argued to be applicable here, it is well established that a union which operates an exclusive hiring hall cannot lawfully refuse to refer applicants to jobs because of union considerations. Patently, by including in the contract involved herein a clause which grants preference in referral to utilities work to "parent body members who are physically handicapped or fifty (50) years of age or older," Respondent has attempted to cause employers who are signatory to the contract to give preference on utilities work to Local 32 parent body members who are physically handicapped or 50 years of age or older.

While the clause in question is unlawful on its face, Respondent contends I should refrain from finding it was inserted in the contract for discriminatory reasons because: (1) The clause "humanely discriminates in favor of the elderly and physically handicapped"; and (2) as membership in the parent body is readily available to those with 3 years' experience as an operator the "parent body clause" is, in effect, merely a clause which grants

<sup>5</sup> Maddix claims Phillips' name was not mentioned during the conversation. Shott, in addition to being a disinterested witness, was more impressive. I credit his version of the conversation.

<sup>6</sup> Shott testified that he asked Pruett what he should do with Phillips during the conversation and that Pruett told him he should lay him off. Shott was the more impressive witness, and I credit his testimony.

<sup>7</sup> Maddix admitted that he told Phillips on Friday or the following Monday or Tuesday that he did not have a parent body book and they were going to go by their out-of-work list and send the first parent body bookman to that utility job. I credit Phillip's testimony where it conflicts with that given by Maddix. Maddix was not an impressive witness and I gained the impression that he sought to tailor his testimony to meet the needs of Respondent's case.

preference to employees who have 3 years' experience as an operator in the area. I reject Respondent's defenses.

The difficulty with the "humane" argument is simply the fact that Respondent grants preference on utility work to its members to the detriment of members of branch locals and nonunion employees who utilize the hiring hall. Similarly, the "three year experience" argument is not meritorious because the clause does not provide that operators with 3 or more years' experience who are physically handicapped or 50 years or older will have preference on utility work; it provides that parent body members meeting such criteria will be accorded the preference.

In sum, I find, as alleged, that by maintaining and enforcing a contractual clause which accords preference in referral to utilities work to members of its parent body who are physically handicapped or 50 years or older since January 16, 1981, Respondent has caused or attempted to cause employers who are signatory to the contract containing such clause to discriminate against employees in violation of Section 8(a)(3) thereby violating Section 8(b)(2) of the Act. By engaging in the described conduct, Respondent additionally restrained and coerced employees in the exercise of their Section 7 rights, thereby violating Section 8(b)(1)(A) of the Act.

## 2. The threat not to refer Phillips to utilities work

The complaint alleges that Maddix restrained and coerced Phillips in the exercise of his Section 7 rights on or about June 16, 1981, by "threatening that he would never work on utility jobs (i.e., compressor and welding machines) without having a 'parent body' book."

As indicated, *supra*, Phillips claims that when Maddix told him he had been laid off because he did not have a parent body book, he observed that he had worked utilities without a parent body book on other occasions, and Maddix allegedly replied that he would not work utilities any more without a parent body book. While Maddix admitted during his testimony that he told Phillips at some time that he did not have a parent body book, he failed to describe the context in which the remark was made. Significantly, Maddix did not deny that he told Phillips he would not work utilities in the future without such a book. In the circumstances described, I find that Maddix uttered the threat attributed to him and that through such conduct Respondent violated Section 8(b)(1)(A) of the Act as alleged. Since the record fails to reveal the comment was made in the presence of any employer representative, I find that General Counsel has failed to establish that the threat constituted violation of Section 8(b)(2) of the Act as alleged.

## 3. The alleged refusal to refer Phillips to the utility job

While the complaint alleges that Respondent violated Section 8(b)(1)(A) and (2) of the Act on June 15, 1981, by refusing to refer Edward Phillips to a "job working on compressors and welding machines for the Employer at its Huntington, West Virginia facility," the actual issue litigated was whether Respondent caused Phillips to be

removed from the job because he was not a parent body member.

During the presentation of its case, the General Counsel was able to show: (1) that National Engineering decided to add a utility man to its job while Phillips was working there temporarily as an oiler and utility man; (2) that the utility job was offered to Phillips subject to the job superintendent's checking with Respondent; (3) that the contract between the parties and Local 132's constitution and bylaws dictated that preference in referral to utility work would be given to parent body members who were physically handicapped or 50 years of age or older; (4) that the Employer contacted Respondent indicating it was to add a utility man to the job on June 15 and indicated it preferred Phillips; (5) that Respondent suggested to the Employer that union steward Legg, a parent body member who is over 50 years of age, be given the job and the Employer indicated it would reject Legg; (6) that Respondent told the Employer to lay off Phillips on June 12; and (7) that Phillips was informed by Respondent he had been laid off because he did not have a parent body book. The General Counsel contends, and I agree, that the above factors establish, *prima facie*, that Phillips was denied the National Engineering utilities job because the contract between the parties and Respondent's constitution and bylaws accorded preference in referral to utility work to parent body members who are physically handicapped or 50 years of age or older.

Respondent contends that I should refrain from finding that it violated Section 8(b)(1)(A) and (2) of the Act in the Phillip's situation because the record reveals that National Engineering opted to fill its utility man opening by requesting that a man be referred to the position from its hiring hall and it complied with such request by sending Dayton Comer, whose name was placed on the list on July 28, 1980, a date almost 2 months prior to the date that Phillips went on the list on September 5, 1980. I reject the defense for the reasons set forth below.

During their testimony, both Maddix and Pruett indicated that the subsisting collective-bargaining agreement entitled National Engineering to simply assign one of its existing employees to work on utilities without the approval of Respondent's officials. In that situation, the "parent body" clause would have been inapplicable as no order for a utility man would have been placed with the dispatcher who administered the hiring hall provisions of the contract. Indeed, Maddix informed Phillips he would have gotten the utility job if Shott had simply assigned him the job rather than place an order for a man to be referred through the hall. As I view the facts in this record, Shott decided on Thursday, June 11, that he wanted Phillips for the utility job; he offered the position to the employee who accepted the offer; and he informed Maddix on June 12 that he was going to put on a utility man on Monday, June 15, and wanted Phillips to be that man. Thus, while Respondent's defense is bottomed upon its claim that Shott called the hiring hall on June 12 to order a utility man, and Maddix falsely testified that Phillips' name was not mentioned, I find that the credible record evidence reveals that Shott called the hall to see if he could assign Phillips to the utility job

rather than to order a utility man through the hall. This conclusion is buttressed by subsequent actions of both Maddix and Pruett—both sought unsuccessfully to convince Shott that he should assign Legg, a parent body member who was over 50 years of age to the job. While the record does reveal that Legg was a logical choice for the job because he had been performing the work for extra pay prior to that time, the fact remains that he was also entitled by the "parent body" clause to preference over Phillips in the situation. Last, but not least, the record reveals that Maddix expressly told Phillips when he asked why he had not gotten the job that he had not gotten it because he did not have a parent body book.<sup>8</sup>

In sum, the observations set forth above cause me to conclude that but for the unlawful "parent body" clause in the contract which was binding upon National Engineering and Respondent, Respondent would have permitted National Engineering to assign Phillips to the utilities job under discussion. I find that by causing National Engineering to lay off Edward Phillips, on June 12, 1981, thus preventing him from obtaining the utilities job under discussion, Respondent violated Section 8(b)(1)(A) and (2) of the Act as alleged. *Electrical Workers Local 99 IBEW (Crawford Electric Construction Co.)*, 214 NLRB 723 (1974); *Electric Workers Local 648 IBEW (Foothill Electrical Corp.)*, 182 NLRB 66 (1970).

#### CONCLUSIONS OF LAW

1. National Engineering Contracting Co. is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent is a labor organization within the meaning of Section 2(5) of the Act.

3. By engaging in the acts and conduct described above in section III of this Decision, Respondent has violated Section 8(b)(1)(A) and (2) of the Act.

<sup>8</sup> Pruett indicated the same thing indirectly at the meeting held on June 26 by telling Phillips he should come to the hall and get a parent book if he found himself in the same situation again.

4. Respondent has not engaged in unfair labor practices alleged except to the extent herein specifically found.

#### THE REMEDY

Having found that Respondent Union violated Section 8(b)(1)(A) and (2) of the Act, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Since I have found that the "parent body" proviso contained in the Heavy Agreement between Constructors' Labor Council of West Virginia, Inc., Respondent and other labor organizations named in said agreement, contains an unlawful proviso which accords preference in assignment to utility work to parent body members (of Local 132) who are physically handicapped or 50 years of age or older, I shall recommend that Respondent notify National Engineering Contracting Co. and all other employer signatories to said agreement that it will no longer give any force or effect to or attempt to enforce such unlawful provision.

I shall further recommend that Respondent be required to notify National Engineering Contracting Co. that it has no objection to its employment of Edward Phillips as a utility employee.

Finally, I shall recommend that Respondent be ordered to make Edward Phillips whole for any loss of earnings he may have suffered as a result of the discrimination against him with interest computed thereon in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and *Florida Steel Corp.*, 231 NLRB 651 (1977).<sup>9</sup> I shall also recommend that Respondent Union be required to post the appropriate informational notice to its members in appropriate places in its offices and meeting halls.

[Recommended Order omitted from publication.]

<sup>9</sup> See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).